

MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD MEETING
May 30, 2006
Room 106, 2811 Agriculture Drive, Madison, WI

The meeting started at 9:30 a.m. LFSRB members present were Lee Engelbrecht, Andy Johnson, Jim Holte, Bob Selk, Bob Topel, Fran Byerly, and Dr. Jerome Gaska. DATCP staff present were Rod Nilesestuen, Cheryl Daniels, Kathy Pielsticker, Dave Jelinski, Richard Castelnuovo, and Lori Price

Welcome by Secretary Nilsestuen

Nilsestuen welcomed the new Livestock Facility Siting Review Board (LFSRB) members and thanked them for their willingness to serve on the board. He stated the board was essentially an appellate body and will be establishing precedent for ATCP 51. The board will also have an impact on the effectiveness of the rule. Wisconsin broke ground on the important issue of siting large livestock operations, and it took 30 months to establish the rule. The rule's end product allows for predictability of growth and land use. Local governments have received the siting guidance, and the board will have excellent department staff to work with.

Appointment of temporary chair

Castelnuovo stated until the board has had an opportunity to elect officers, Daniels offered to serve as temporary board chair. Daniels introduced herself as the department attorney that works directly with Secretary Nilsestuen. She administers cases, sits as a quasi judge for the department, and finalizes decisions made by the Department Secretary. She has worked in this area of DATCP since 1988. She also gave a brief history of her other roles in DATCP prior to 1988.

Daniels stated the board will review local decisions to make sure they followed the law. The board is not allowed to bring in new evidence to a case it is reviewing. The case records the board will receive may be large. Local governments will deal with cases where a facility requesting expansion has complied with the law and was issued a local permit but the local people are unhappy with the decision. The board will not be dealing with these types of cases.

Holt made a motion to appoint Daniels as the temporary board chair until officer elections have taken place. Johnson seconded the motion. The motion passed.

Introductions

Byerly stated he has been a Wisconsin resident all his life and is also a livestock producer with Jennie-O farms. He was nominated by the Poultry Working Group, and understands the need to not have unlimited expansion and the need for air and water protection.

Engelbrecht introduced himself as the towns' representative to the board. He operated a dairy farm up until two years ago. Now he operates a livestock trucking company. He expressed the need to keep livestock farming as part of Wisconsin.

Selk retired from the Wisconsin Department of Justice in 2004. He worked in the environmental enforcement area in DOJ. He is active in Trout Unlimited, who along with Midwest Environmental Advocates nominated him to the board. He served on the Dairy Green Tier and Manure Management Task Force initiatives. He stated he understands the board has a limited role and will work independently from DATCP. His goal is to act on consensus and help to form a coherent cooperative group that is effective in implementing the law.

Gaska has lived in Columbus most of his life. He knows first hand what farms have had to go through in order to expand. He was nominated by the Wisconsin Veterinary Medical Association and is looking to provide a balanced view to the board.

Topel introduced himself as a dairy producer from the Waterloo area. He was nominated by the Wisconsin Federation of Coops. He also ran into an issue with expansion when his daughter returned to farm with the family. He has served for the last 15 years on the Foremost Farms Board of Directors. He is looking forward to working with this board.

Johnson was nominated by the Wisconsin Counties Association. He is a resident of Marathon County. He worked on the NR 243 and technical standards committees. He works with the Marathon County Conservation, Planning and Zoning Department providing technical support on manure storage and storm water control. The bulk of his career has been working with Concentrated Animal Feed Operations (CAFO). He has also been involved with enforcement activities. He looks forward to serving on the board.

Holte was nominated by the Wisconsin Farm Bureau Federation. Previously he worked on the livestock siting committee that developed the rule. He was in the dairy business until 1997 and is currently in the cattle feeding business.

After board member introductions took place, DATCP staff introduced themselves. Jim Massey with the Country Today and Joan Shepel with the Wisconsin State Farmer also introduced themselves.

Presentation and discussion of livestock siting law and rule—Dave Jelinski, DATCP

Jelinski's presentation covered origins and features of the law, features of the rule, affected stakeholders, local governments with existing permit requirements, application criteria, key permit requirements, other laws that affect livestock siting, and siting standards and worksheets. He stated that by the end of the year, department staff hope to have a complete and accurate record of all county/local ordinances once they decide whether to participate in the program, which needs to be decided by November 1, 2006. Jelinski ended his presentation by listing the benefits of the rule and the departmental resources available to the board.

Johnson asked if there will be an incursion to fix the animal units as a reference point (to establish it). Jelinski responded that given the legislative debate on this item in the rule, the animal units question is not over yet. There may be vigorous debate on this issue particularly given the fact that DNR has come up with another system that has been submitted to the legislature.

Presentation and discussion of roles and responsibilities of the board and staff—Richard Castelnovo, DATCP

Castelnovo gave a presentation on the interaction between the law and the board. In his presentation, he addressed the board's primary roles including the meaning of quasi-adjudicatory, the siting law functions the board will not do, challenges to maintaining partiality, knowing the laws that affect livestock siting, the standards for local approval, timely review of cases, the purpose of the board attorney, what the board can do during the decision-making process, and what service DATCP staff can specifically provide to the board.

Selk asked what role DATCP staff will have in decision-making. He was concerned that there may be undo influence on the board through DATCP staff receiving outside information on the case. Castelnovo responded that if board members have questions about a case, they should contact the board attorney, who is separate from the processes bureau staff will be involved with. Board members should not call other DATCP staff directly about a case.

Selk asked if the board will have the duty to determine if the application is complete since the board cannot defer to the local decision. Daniels responded that is something the board will have to decide, and then that decision should be used on a consistent basis.

Holte asked if the meetings will be open to the public. Castelnovo responded that the regular portion of the meeting will be open to the public but the board will need to decide whether to make their decisions under closed or open sessions. This will be discussed when the board reviews the draft bylaws. Topel asked if the board should ask questions about the case before the meeting or during the meeting. Jelinski responded the board members should call Daniels with questions about the case before the meeting. If board members still have questions, they may bring them to the meeting. Questions regarding board meeting administration should be directed to Lori Price. Daniels encouraged the board to bring any general questions they may have about the law to the next meeting (June 30th).

Holte asked if the aggrieved party will have the option to give oral argument to the board during the meeting. Selk recommended not allowing for oral arguments or using discretion when allowing for oral argument. Daniels added that other boards reserve the right to hear oral argument and it is done on a very limited basis, usually in exceptional cases.

Review and discussion of proposed bylaws—Cheryl Daniels, DATCP

Daniels led the board members through discussion of the proposed bylaws. The first section reviewed was on the purpose of the board. Selk asked if the bylaws affect the law. Daniels responded they affect the law in that they are rules the board must follow. Jelinski added when

the rule was first written, there was a decision not to have the department do the bylaws for the board. Bylaws can be clumsy at first but overtime can work. It would be much harder for the board to do their bylaws through the rule-making process.

Next section covered was board membership. Daniels stated this section covers who comprises the board membership, how vacancies are handled, board member terms, attendance at meetings, and the required oath of office. Selk asked if the board has any authority with respect to vacancies. Daniels replied the law demands the DATCP Secretary choose the members. Castelnovo stated he will include the reference to this portion of the law in this section. Jelinski stated for board continuity, the department chose to include an attendance section, which is not in the law itself.

The board moved on to the officers section of the bylaws. Daniels stated officers are elected each odd-year. Selk questioned whether elections should take place every year. The board decided to change this section to reflect that officers are elected in June of each year.

The board then reviewed the authorities and responsibilities section. During the explanation of the quasi-adjudicatory functions of the board, there was discussion on whether the board seeks enforcement of its decision in a court of law. Members agreed the statement indicating the board seeks enforcement should be removed as it is misleading. Local governments will need to pursue enforcement of a board decision. Topel asked if the board first decides if it has precedence over a case and then decides if the local decision was right or wrong. Daniels responded the board can give authority to her to decide which cases come before the board. At the next board meeting, the board can report on the cases that they will not be reviewing. However, the board may recommend reviewing a case regardless of Daniels' recommendations. She would then request the record from the local government. Selk expressed a concern that if the board decides not to take a case, the aggrieved party must be given a chance to file a motion to reconsider. Byerly asked if he can converse with other board members between meetings. Daniels responded that board members cannot converse on cases between meetings. Also, the board can have a meeting without a quorum, but no decisions can be made at the meeting. The board can also choose to hold a meeting through conference call or by e-mail.

The section on the decision-making process was discussed next. Daniels stated that the decision-making procedures were outlined in Appendix A to the bylaws, and DATCP staff are available for administrative and legal support on the procedures. Selk asked if the decision is made first and then the order is drawn up. Daniels confirmed this, adding that legal should not be drawing up an order ahead of time. Castelnovo added that it is possible that a quasi order may have to be drawn up to request records from local governments. Daniels made the suggestion the board could give her the authority to request the record. Selk asked if the board should send a notice to the local government stating that a request for review was filed. Daniels responded that a notice can be sent and can include information that the board will deal with the jurisdiction issue at its next meeting. She gave further explanation about the 30-day and 60-day timelines. Topel suggested the notice also include the date when the board will take up the case. Johnson suggested the request for the record be sent certified mail, and Byerly added the board decision should also go through certified mail.

The meeting procedure section was reviewed next. Daniels said that monthly meetings will be scheduled and if the board does not need to meet, the meeting will be cancelled. The board made minor changes in this section to reflect additional, rather than “special,” meetings may be called; meetings will be held at other locations, besides Madison, as determined by the board; agendas will be prepared by DATCP staff in consultation with the board chair; agendas for additional meetings will be mailed as soon as possible; elimination of oral arguments as a potential agenda item; the board approves the minutes; and the board makes decisions only during meetings, not through polling or balloting members. Johnson suggested that minimally, the agenda and minutes should be sent electronically. There was also further discussion on if roll call votes should be taken at meetings and how this may potentially impact the final board decision.

Compensation and expenses were discussed. The board members made changes to this section to reflect that they will not be receiving per diems and that members need to get approval from the board chair to attend meetings outside of the board meetings.

Amending the bylaws was discussed next. The board made the change that the bylaws can be amended through a two-thirds majority vote. The last of the bylaws sections addressed assistance that DATCP staff will provide to the board. Board members should request staff assistance through Daniels.

The board then moved on to review the procedures for reviewing a case. Under the initiation of proceeding section, there was discussion on giving the applicant, who may not be the aggrieved party, a chance to present their side of the case and sending notification to other parties who reside near the facility. Castelnovo will further research noticing parties in an appeal and get back to the board with an answer. The board members decided to make the 30-day time limit apply to requests for record and not in cases where the board is first reviewing jurisdiction. Topel expressed a concern with what is required to be sent as part of the record and what will happen when the board is missing pieces of the record. Daniels responded the board will have to review the case to decide if enough materials are there to make a decision. Castelnovo added there are a couple of items, such as the application and ordinance, required to be sent in as part of the record.

In the pre-decision administrative procedures section, Selk stated that the applicant should receive notice as well. The rest of the board members were open to this idea.

Under the decision making process section, the board added that a motion to reconsider should be received within fifteen days of the board’s decision. The paragraph on the rights of parties was eliminated. Deliberation was discussed next. Daniels stated that candor plays a part in quasi judicial boards. The board may want to consider holding the decision discussion in closed session in order to reach a consensus and vote on the decision in open session.

Under the rules of conduct section, the board decided to eliminate the paragraph that states a board member may be disqualified from a case review if they receive communication about a case outside of the record that was submitted.

If the board members have any additional comments on the bylaws or procedures, they should send them to Daniels within the next two weeks.

Administrative housekeeping

Price explained the Taxpayer Identification Number (W-9) form needs to be filled out by each board member so they can be entered into the state's payment system and be reimbursed for travel expenses. Also, Castelnovo stated that materials will be sent through e-mail to the board members. The board then set the dates for the rest of their meetings in 2006: June 30th, July 21st, August 18th, September 15th, October 20th, November 17th, and December 15th. After the June meeting, the meetings will fall on the third Friday of the month.

Adjourn

The meeting ended at 4 p.m.

Respectfully submitted,

 6.30.06
Date

Recorder: LP